

2001

State of Utah v. Kelly Lafe Garner : Brief of Appellee

Utah Court of Appeals

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IN THE UTAH COURT OF APPEALS

STATE OF UTAH, :
Plaintiff/Appellee, :
v. : Case No. 20010462-CA
KELLY LAKE GARNER, : Priority No. 2
Defendant/Appellant. :

BRIEF OF APPELLEE

APPEAL FROM A CONVICTION ON FOUR COUNTS OF
BURGLARY, A THIRD DEGREE FELONY, IN VIOLATION
OF UTAH CODE ANN. § 76-6-202 (1999), IN THE
SECOND JUDICIAL DISTRICT COURT IN AND FOR
WEBER COUNTY, THE HONORABLE PARLEY R.
BALDWIN, PRESIDING

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FILED

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Clerk of the Court

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IN THE UTAH COURT OF APPEALS

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BRIEF OF APPELLEE
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JURISDICTION AND NATURE OF PROCEEDINGS

This is an appeal from a conviction for four counts of burglary, all third degree felonies (R. 94-95). This Court has jurisdiction over the appeal pursuant to Utah Code Ann. § 78-2a-3(2)(f) (Supp. 2001)

STATEMENT OF THE ISSUE ON APPEAL AND

STANDARD OF APPELLATE REVIEW

If this Court chooses to consider the merits of defendant's inadequately articulated and briefed claim, the issue is:

Did the trial court properly deny defendant's motion to dismiss on the ground that his constitutional right to a speedy trial was not violated by the passage of 14 months between the State's filing of an information against defendant and its subsequent filing of a detainer?

"[T]he propriety of a trial court's decision to grant or

deny a motion to dismiss is a question of law that we review for correctness.'" State v. Amoroso, 1999 UT App 60, ¶6, 975 P.2d 505 (quoting Tiede v. State, 915 P.2d 500, 502 (Utah 1996)) (alteration in original).

CONSTITUTIONAL PROVISIONS, STATUTES AND RULES

The Sixth Amendment to the United States Constitution provides: "In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial. . . ."

STATEMENT OF THE CASE

The chronology of events pertinent to this appeal is as follows:

Nov. 1997 - March 1998	Offenses at issue are committed (R. 1-10; R. 106 at addendum A)
May 1998	State's witness makes written statement implicating defendant (R. 106); defendant, incarcerated in Davis County, agrees to talk to investigators upon release from jail, but instead flees the jurisdiction (R. 107)
June 1998-August 1999	Defendant incarcerated in Colorado (R. 107)
May 1999	Defendant's mother dies (R. 107; R. 113, tab 4, p. 12)
June 14, 1999	Information filed (R. 1-10)
November 1999	Defendant transported to Alabama State Prison for parole violation (R. 107-08)
Mid-July - Aug. 3, 2000	Utah lodges detainer (R. 108)
January 4, 2001	Arraignment; Defendant waives

	preliminary hearing and enters plea of not guilty (R. 36-40)
January 29, 2001	Motion to Suppress/Dismiss filed; defendant raises speedy trial issue (R. 48-52)
February 22, 2001	Motion hearing; defendant argues his due process rights violated by pre-filing delay; his speedy trial right denied by delay between filing of information and placing of detainer (R. 113, tab 4, pp. 1-4).
March 22, 2001	Motion to Dismiss denied (R. 73-74)
April 19, 2001	Defendant enters guilty plea to four counts of burglary, reserving right to appeal speedy trial issue (R. 91-92; R. 113, tab 7, p. 2-3)
May 14, 2001	Minute Order: Judgment, Sentence, Commitment to Utah State Prison, 0-5 years, concurrent with an Alabama sentence currently being served; \$10,840 in restitution, collectable after completion of Alabama parole/probation (R. 94-96)
May 31, 2001	Notice of appeal filed (R. 101)
July 11, 2001	Findings of Fact, Conclusions of Law, and Order denying Motion to Dismiss (R. 106-09 or addendum A)

STATEMENT OF THE FACTS

The facts of the offense of burglary are not pertinent to the resolution of this case.

SUMMARY OF ARGUMENT

At the outset, this Court may choose not to consider defendant's claim because it is both inadequately presented and

argued. Even on the merits, however, defendant's constitutional right to a speedy trial, when evaluated pursuant to the four-prong balancing test articulated in Barker v. Wingo, 407 U.S. 514 (1972), was not violated by the passage of 14 months between the filing of the information and the lodging of the detainer. Although the length of the delay triggers further analysis, the delay was not intentional on the State's part, defendant did not assert his right until nearly five months after the detainer had been lodged and, most importantly, defendant has wholly failed to establish any prejudice arising from the delay. Consequently, his claim fails.

ARGUMENT

DEFENDANT HAS NOT ADEQUATELY
ARTICULATED OR BRIEFED HIS SPEEDY
TRIAL CLAIM; IN ANY EVENT, SUCH AN
ARGUMENT WOULD FAIL UNDER THE FOUR-
PART BALANCING TEST ARTICULATED IN
BARKER V. WINGO, 407 U.S. 514
(1972)

In the trial court, defendant moved for dismissal, arguing that the State's delay in filing charges against him violated his right to due process and that the passage of time between the State's filing of the information and its placement of the detainer violated his right to a speedy trial (R. 113, tab 4, pp. 2-4). The trial court rejected these claims, focusing its written ruling largely on the speedy trial issue (R. 106-09 at addendum A).

On appeal, defendant's argument is unclear. Nowhere does he articulate the distinction he asserted in the trial court between pre-filing delay as a due process violation and post-filing delay as a speedy trial violation. To the contrary, he seems to merge the due process and speedy trial arguments, focusing primarily on the pre-filing delay and secondarily on the post-filing delay, but framing both in the rubric of speedy trial violations. See Br. of App. at 13-14.

In addition to the lack of clarity in articulating the parameters of his argument, defendant's legal analysis is inadequate. While he discusses a United States Supreme Court case at some length and cites to several Utah cases, his brief contains but a single page of argumentation, which does little to clarify how the law applies to the facts of his case. See Br. of App. at 13.

Under such circumstances, this Court should decline to even consider his claim. Pursuant to rule 24(a)(9), Utah Rules of Appellate Procedure, a reviewing court is "entitled to have the issues clearly defined with pertinent authority cited," and is not "simply a depository in which the appealing party may dump the burden of argument and research." Monson v. Carver, 928 P.2d 1017, 1024 (Utah 1996). This Court has consistently declined to address issues not adequately briefed under rule 24. See, e.g., State v. Yates, 834 P.2d 599, 602 (Utah App. 1992); State v.

Price, 827 P.2d 247, 249 (Utah App. 1992); State v. Day, 815 P.2d 1345, 1351 (Utah App. 1991).

Even if this Court were to address defendant's claims, they would fail.

Defendant first argues that the delay of 13 months between the time the State obtained a witness statement implicating him in the crimes at issue and the time the State filed the information violated his speedy trial right (Br. of App. at 13). This claim fails at the outset because until a defendant has been formally accused, either by the filing of an information or an indictment, the right to a speedy trial is not implicated.¹ Doggett v. United States, 505 U.S. 647, 651-52 (1992) (identifying "the interval between accusation and trial" as the critical period in which delay may trigger a speedy trial analysis).

Defendant also argues that the delay between the State's filing of the information and its filing of a detainer some 13 to 14 months later violated his right to a speedy trial (Br. of App. at 13). This delay triggers the analysis set forth in Barker v.

¹ Even if this claim had been argued on appeal as a due process violation, it would necessarily fail. The trial court found that investigators had sought to interview defendant in jail prior to charging him in this case (R. 107). Defendant agreed to be interviewed upon his release from jail but then immediately absconded from the jurisdiction (Id.). Having thus impeded the investigation, defendant cannot now claim that the length of delay caused by his own conduct violated his right to due process. See State v. Trafny, 799 P.2d 704, 707 (Utah 1990) (delay attributable to defendant should not be assessed against the State).

Wingo, 407 U.S. 514, 530 (1972) and endorsed in Utah by State v. Banks, 720 P.2d 1380, 1385 (Utah 1986). Pursuant to that analysis, a reviewing court balances the impact of four factors, the first of which is the length of the delay. Barker, 407 U.S. at 530; Banks, 720 P.2d at 1385. Generally, postaccusation delay of about a year, as in this case, will trigger further judicial review. Doggett, 505 U.S. at 652 n.1 (citing 2 W. LaFave & J. Israel, Criminal Procedure § 18.2, p. 405 (1984)). Certainly, when delay stretches beyond what is ordinary in the course of judicial proceedings, its prejudicial effect will intensify over time. Doggett, 505 U.S. at 652. In this case, the delay of just over a year, while not ordinary, was not extraordinary.

The second factor examined by a reviewing court is the reason for the delay. Barker, 407 U.S. at 531. Barker teaches that "different weights should be assigned to different reasons," with intentional delays held against the State. Id. Negligence, on the other hand, is "[a] more neutral reason" and "should be weighted less heavily." Id. In this case, the State conceded at trial that the delay between June of 1999, when the information was filed, and August of 2000, when the detainer was lodged "is simply negligence, dereliction, whatever. I don't have an explanation" (R. 113, tab 4, p. 9).

Third, a reviewing court looks at whether and how a defendant asserts his right to a speedy trial. Barker, 407 U.S.

at 531. In this case, defendant waited almost six months after Utah lodged its detainer in Alabama before he filed his motion to dismiss asserting his right to a speedy trial (R. 48-52).

The fourth factor is prejudice to defendant resulting from the delay. Barker, 407 U.S. at 532. Defendant contends that he was actually prejudiced by the delay between the time Utah filed charges against him and the time it filed a detainer, pointing specifically to Alabama's refusal to consider him for parole once it realized that Utah had an interest in him (Br. of App. at 13).² This claim fails because no record evidence supports this factual allegation.³

² Under the rubric of speedy trial, defendant also argues that his mother would have provided an alibi for him and that, consequently, he was actually prejudiced by her death during the pre-filing delay. See Br. of App. at 13. In the trial court, however, defendant's counsel stated, "I'm agreeing that the death of the mother does not affect the speedy trial argument. That was the due process argument. A speedy trial because, the right to a speedy trial does not apply to the information as filed so any prejudice that occurred prior to that time would not, would clearly not affect to whether or not the defendant was denied his right to a speedy trial [sic]. I'm agreeing with [the prosecutor] that the death of the mother does not apply to that argument" (R. 113, tab 4, p.18). Defendant plainly cannot argue on appeal precisely what he conceded below - that his mother's death, which occurred prior to the time he was charged, had any effect on a right that accrued only after he had been formally charged. State v. Tueller, 2001 UT App 317, ¶21, 37 P.3d 1180.

³ Defendant argued in the trial court that he need not prove "actual prejudice" because a delay of more than 12 months created "presumptive prejudice." See R. 113, tab 4, pp. 4-5, 12-15. On appeal, however, defendant has seemingly abandoned the presumptive prejudice argument, and focused wholly on what he perceives to be actual prejudice. See Br. of App. at 13-14.

In the trial court, defense counsel asserted that the State stipulated that defendant had suffered the "loss of parole date" based on the State's delay in filing a detainer (R. 113, tab 5, p. 3-4). The State responded, "I have not stipulated to that but I didn't have any reason to dispute that. . . . I don't have any reason to know otherwise, your Honor, that could very well be" (Id. at 4). In essence, the State simply said that it didn't have knowledge on the matter one way or the other. The trial court then directed counsel, "[Prosecutor,] you'll prepare the findings of fact and if you'll look at those, [defense counsel], and make sure that you have any facts that you want listed in that finding of facts so that's preserved" (Id.). Notably, the findings of fact before this Court on appeal are wholly silent on the issue of a parole date, whether defendant had one, or if it was denied. Without any record evidence, this Court cannot conclude that defendant suffered prejudice by failing to obtain parole in Alabama as a result of a delay between the filing of the information and the lodging of a detainer. State v. Wulffenstein, 657 P.2d 289, 293 (Utah 1982).

CONCLUSION

For the reasons stated, this Court should affirm defendant's four convictions for burglary, a third degree felony.

RESPECTFULLY submitted this 4th day of March, 2002.

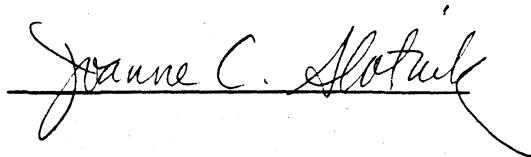
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CERTIFICATE OF MAILING

I hereby certify that two true and accurate copies of the foregoing brief of appellee were mailed first-class, postage prepaid, to Maurice Richards, attorney for appellant, Public Defenders Association of Weber County, 2568 Washington Blvd., Suite 102, Ogden, Utah 84401, this 4th day of March, 2002.



ADDENDUM A

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2001.11.17 P 2:05

IN THE SECOND DISTRICT COURT OF WEBER COUNTY,
STATE OF UTAH

STATE OF UTAH, Plaintiff, vs. KELLY L. GARNER Defendant.	FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER OF THE COURT Case No. 991902255 Judge Parley R. Baldwin
--	---

This matter came before the Court for hearing on the Defendant's motion to dismiss for denial of speedy trial and claimed violation of due process of law. The Defendant was present and represented by Martin Gravis. The State was represented by Richard Parmley. The Court heard the arguments and took the matter under advisement until March 22, 2001, at which time the Court made an order from the bench denying the Defendant's motion to dismiss. The Court issues these written findings of fact, conclusions of law and order consistent with that action.

FINDINGS OF FACT

1. The offenses with which the Defendant was charged occurred between November 1997 and March 1998.
2. A key witness for the State made a written statement in May of 1998 identifying the Defendant as the perpetrator of the crimes. This statement was further developed over a period of four to six months.

3. Defendant had been arrested in Davis County and was in the Davis County Jail from April of 1998 to May of 1998
4. The Defendant knew of the investigation being conducted in Weber County and had indicated a willingness to talk with investigators there upon his release from the Davis County Jail.
5. Weber County investigators wanted to interview the suspect before a decision was made to charge him.
6. When the Defendant was released from the jail he fled the jurisdiction while the Davis County matters remained adjudicated.
7. The Defendant never made contact with the Weber County investigators who were continuing to investigate the case through the remainder of 1998 and beginning of 1999.
8. In May of 1999, the Defendant's mother died and Defendant claims she would have offered pertinent alibi testimony in his defense.
9. The Defendant was arrested for criminal trespass in Colorado in June of 1998 and remained incarcerated there until August of 1999.
10. The County Attorney's Office filed this case in June of 1999, approximately one year after Weber County had begun investigation.
11. At the time the informations were filed, Weber County investigators had learned of the Defendant's incarceration in Colorado
12. Weber County did not locate the Defendant's exact whereabouts in Colorado to lodge a detainer at that time.
13. In November of 1999, the Defendant was transported to the Alabama State Prison

for a parole violation.

14. The Defendant remained in the Alabama prison until shortly after the State became aware of his whereabouts and lodged a detainer sometime between mid July and August 3, 2000.

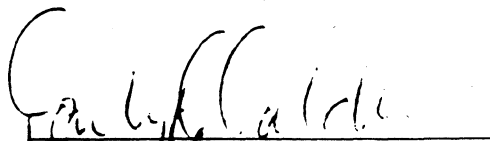
CONCLUSIONS OF LAW

1. The delay between the commission of the offenses and the filing of the charge in this case were not intentional on the part of the State to gain strategic advantage
2. There were various reasonable explanations for the delay including a desire to talk with the defendant who had fled the jurisdiction and other efforts to bolster the evidence against the Defendant by obtaining statements from other witnesses.
3. The delay of one year between charging the Defendant and bringing him to trial is not alone sufficient to conclude a denial of a right to speedy trial but warrants consideration of the other factors set forth in Barker v. Wingo, 407 U.S. 514 (1972) and State v. Banks, 720 P.2d 1380 (Utah 1986) (reason for the delay, Defendant's assertion of his right, and prejudice to the Defendant).
4. In balancing these factors and the other circumstances contained in the findings of fact the Defendant has not been denied his right to a speedy trial.

ORDER

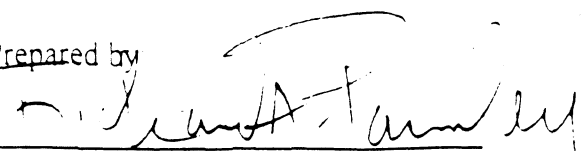
The Court denies the Defendant's motion to dismiss.

DATED this 7 day of July 2001.



Parley R. Baldwin
District Court Judge

Prepared by


Richard A. Parmley

Approved as to form:


Martin V. Gravis

CERTIFICATE OF DELIVERY

This is to certify that a true and correct copy of the foregoing FINDINGS OF FACT CONCLUSIONS OF LAW AND ORDER OF THE COURT was hand delivered or mailed, postage pre-paid, to:

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DATED this 11th day of June, 2001

